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MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

COPY NOV 03 2003
SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-13.035
 Diskette File Name 13.035 Word 2000
 Name of Person to call with questions about this rule:
 Content Lera Shemwell Phone 573-751-7431 FAX 573-751-9285
 Data Entry Susan L. Sundermeyer Phone 573-751-4335 FAX Same as above
 Email Address lerashemwell@psc.state.mo.us
 Interagency Mailing Address Governor Office Building, 200 Madison St., Suite 800, Jefferson City, MO
 Statutory Authority 386.250(6) Current RSMo date 2000
 Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024
RSMo Supp. 1997, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input checked="" type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input checked="" type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency Rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☒ Proposed Rulemaking (check one) ☒ rule ☐ amendment ☐ rescission
☐ Order of Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
☐ Rule action notice
☐ In addition
☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

☐ Statutory 30 days
Specific date _____

b. Does the Order of Rulemaking contain changes to the rule text?

☐ YES ☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

November 3, 2003

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Honorable Matt Blunt
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Blunt:

Rule: 4 CSR 240-13.035 DENIAL OF SERVICE RULE

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission on this 3rd day of November 2003.

The Missouri Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small business. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo and that this proposed rule does not constitute a taking of real property under relevant state and federal law.

Statutory authority: 386.250, RSMo 2000.

Missouri Public Service Commission Case No.: AX-2003-0574.

If there are any questions regarding the content of this proposed rule, please contact:

Lera L. Shemwell, Senior Counsel
Missouri Public Service Commission
200 Madison St.
Post Office Box 360
Jefferson City, Missouri 65102
(573) 751-7434
lerashemwell@psc.state.mo.us

Sincerely,

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Enclosures

AFFIDAVIT


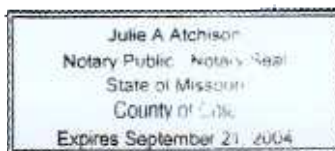
STATE OF MISSOURI)
)
COUNTY OF COLE

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the **Proposed Rule -- 4 CSR 240-13.035 -- Denial of Service** is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill
DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 29th day of September, 2003.
I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on September 21, 2004.


NOTARY PUBLIC

Title 4 – Department of Economic Development
Division 240 –Public Service Commission
Chapter 13—Service and Billing Practices for Residential Customers
of Electric, Gas and Water Utilities

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PROPOSED RULE

NOV 03 2003

4 CSR 240-13.035 Denial of Service

SECRETARY OF STATE
ADMINISTRATIVE RULES

PURPOSE: This rule prescribes conditions under which utilities may refuse to commence service to an applicant for residential service and establishes procedures to be followed by utilities to insure reasonable and uniform standards exist for the denial of service. This rule also protects an applicant(s) at the time of their application, from being required to pay for the bill incurred by other individuals for service from which the applicant(s) did not receive substantial benefit.

(1) A utility may refuse to commence service to an applicant for any of the following reasons:

(A) Failure to pay an undisputed delinquent utility charge for services provided by that utility within the state of Missouri;

(B) Failure to post a required deposit or guarantee in accordance with 4 CSR 240-13.030;

(C) Refusal to permit inspection, maintenance, replacement or meter reading of utility equipment if the utility believes that health or safety is at risk. A utility shall provide notice to the applicant regarding its need for inspection, maintenance, replacement or meter reading of utility equipment and shall maintain an accurate record of the notice provided.

1. The notice shall include one of the following:

A. Written notice by first class mail sent to the applicant; or

B. Written notice delivered in hand to the applicant; or

C. At least two (2) telephone call attempts reasonably calculated to reach the applicant.

2. The notice shall contain the following information:

A. The name and address of the applicant and the address where service is being requested;

B. How the applicant may comply with the requirements to have service connected;

C. A telephone number the applicant may call from the service location without incurring toll charges and the address of the utility prominently displayed where the applicant may make an inquiry.

D. A statement in Spanish either:

(I) advising the applicant that if they do not read English, to ask someone who does to translate the notice for them, or

(II) advising the applicant to call the utility for assistance if the utility provides telephone assistance in Spanish.

E. If the applicant is unable to resolve the matter satisfactorily with the utility, they may contact the Public Service Commission.

(D) Misrepresentation of identity;

(E) Violation of any other rules of the utility approved by the commission which adversely affects the safety of the customer or other persons or the integrity of the utility's system; or

(F) As provided by state or federal law.

(2) A utility may not refuse to commence service to an applicant for any of the following reasons:

(A) Failure to pay for merchandise, appliances or services not subject to commission jurisdiction as an integral part of the utility service provided by a utility;

(B) Failure to pay the bill of another customer, unless the applicant who is seeking service received substantial benefit and use of the service to that customer. In this instance, the utility refusing to commence service, shall have the burden of proof to show that the applicant received substantial benefit and use of the service. To meet that burden the utility must have reliable evidence that:

1. The applicant and that customer resided together at the premises where the bill was incurred and during the period the bill was incurred; and

2. The bill was incurred within the last five (5) years; and

3. The utility has attempted to collect the unpaid bill from the customer of record; and

4. At the time of the request for service, the bill remains unpaid and not in dispute.

(3) The utility shall commence service in accordance with this rule as soon as possible on the day specified by the customer for service to commence, but no later than, three (3) business days following the day specified by the customer for service to commence.

(4) Notwithstanding any other provision of this rule, a utility may refuse to commence service temporarily for reasons of maintenance, health, safety or a state of emergency.

(5) Any provision of this rule may be waived or varied by the commission for good cause.

AUTHORITY: sections 386.250(6), 393.140(11), 393.130(1) RSMo 2000.

Original rule filed November 3, 2003.

PUBLIC COST: *This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE ENTITY COST: *This proposed rule will cost private entities more than five hundred dollars (\$500) in the aggregate. The cost for each utility is estimated to be under forty-three thousand dollars (\$43,000) the first year and eighteen thousand five hundred dollars (\$18,500) in succeeding years.*

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: *Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices within thirty (30) days after publication of this notice in the **Missouri Register**, and should include a reference to Commission Case No. AX-2003-0574 or to the Denial of Service Rule. If comments are submitted by paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. Comments may also be submitted at the public hearing. The Commission will hold a public hearing at which the Commission will take sworn testimony concerning the reasonableness of the rule. The hearing is scheduled*

for January 26, 2003, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to provide testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development

Division: Missouri Public Service Commission

Chapter: 13-Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities

Type of Rulemaking: New Rule

Rule Number and Name: 4 CSR 240-13.035 Denial of Service

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classifications* by type of the business entities which would likely be affected:	Estimated in the aggregate as to the cost of compliance with the rule by the affected entities:
Four (4) electric corporations	Publicly held electric corporations	\$1,814,400 the first year \$800,000 subsequent years
Seven (7) gas corporations	Publicly held gas corporations	\$1,393,200 the first year \$600,000 in subsequent years
Sixty-six (66) water corporations	Publicly held water corporations	\$ 32,400 the first year \$ 10,000 subsequent years
	All entities	\$3,240,000 the first year 1,410,000 subsequent years

III. WORKSHEET

1. The Missouri Public Service Commission sent a draft of the proposed rule and letter or e-mail to all publicly held electric, gas and water utility corporations in the state asking for the fiscal impact of this rule on their operations.
2. Nine of the seventy-seven publicly held corporations affected by the proposed rule responded to the request with numbers reflecting their estimated cost.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be indefinite.

2. Staff estimated the aggregated private entity cost per utility to be \$42,000 the first year and \$32,000 in succeeding years.
3. The lower private entity cost after the first year is based on the fact that there is a one-time initial cost for making changes to billing systems for notice requirements.
4. It is important to note, that the majority of the utility corporations will not experience any fiscal impact.
5. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
6. Estimates assume utilities will use all other debt collection options available to them.
7. The rule does not affect the creditor rights and remedies of a utility otherwise permitted by law.
8. The rule does not require a utility to commence service to an applicant engaged in name-switching to avoid payment of bills nor does it require commencement of service when there has been any other type of consumer fraud.
9. The rule does not affect the current rules regarding deposits.
10. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations and with all applicable Missouri statutes.
11. The universe of entities is based on fiscal year 2003 data and is assumed to remain constant.
12. Not all utilities are denying service to an applicant because of an unpaid bill of another individual for service from which the applicant did not receive substantial benefit, so those utilities are unaffected.
13. A utility should not have been using its monopoly status to deny an essential service to an applicant to force the applicant to pay for another customer's bill when the applicant has not received substantial benefit from the service provided to the other customer.
14. Prompt connection of applicants who have a history of paying their utility bills should enhance revenue.
15. The rule will have limited effect, if any, on water companies.
16. A level of un-collectibles is included in the revenue requirements for each regulated gas and electric company. The level may vary from year to year for many reasons other than the effects of this rule, including, for example: the economy, the level of unemployment in certain areas, the weather and the price of natural gas.



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

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Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

November 3, 2003

Mr. Joseph Driskill, Director
Department of Economic Development
Small Business Analysis
301 West High Street
Jefferson City, MO 65102

RE: Case No. AX-2003-0574
Small Business Analysis for Proposed Rule 4 CSR 240-13.035 Denial of Service

Dear Mr. Driskill,

Executive Order 03-15 requires state agencies to determine whether implementation of a proposed rule making will have direct economic impact on small businesses. A small business is defined in the Executive Order as "a for-profit enterprise consisting of fifty (50) or fewer full or part-time employees." Pursuant to the order, the Commission has completed a "small business analysis" of the above referenced proposed rule. The following statement contains the Commission's determinations as required by the Executive Order:

Small utility companies may be affected by the rule.

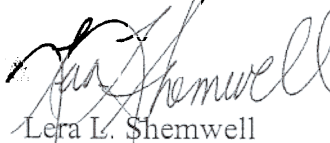
- 2 The rule will apply to all gas, electric and water utility companies, including small local gas distribution companies, one electric company, and small water companies.
- 3 It is possible under the rule that the cost of bill collection may increase slightly. But the Commission Staff requested fiscal impact information from all affected utilities and none of the small businesses replied that they would suffer any financial impact.
4. The Commission expects that neither it nor any other state agency will incur costs or receive any benefit from implementation of the proposed rule.
- 5 Because it has received no indication that any small business will be impacted by the rule the Commission found it unnecessary to, and did not, make efforts to reduce the impact on small business.

6. The Commission invited all utilities to participate in a roundtable discussion hosted in Jefferson City in fall 2002, provided draft rules for company comment prior to initiation of the rulemaking, and after initiation of the rulemaking it asked companies to submit fiscal impact statements.
7. There is no comparable federal rule as regulation of in-state activities of local public utilities is a matter traditionally left to the states. This rule is, however, quite similar to the Commission's discontinuance of service rule, which has been in place since 1974 and was amended in 1994.

The Commission has received no information that there will be any impact on small business, and so has determined that there is no impact on small business.

Please let me know if you have any questions concerning this proposed rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lera L. Shemwell", is written over a faint, larger version of the same signature.

Lera L. Shemwell
Senior Counsel
Missouri Public Service Commission
(573) 751-7431
(573) 751-9285 (Fax)